

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, January 25, 2006, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Walter Tarmann
Ray Dwyer

BOARD MEMBERS ABSENT: Walter Schmidt

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT: Sandra Murray, BA05:099, petitioner
Mary Linn, BA05:099, neighbor
Duane and Barbara Mlachnik, BA05:100, petitioners
Michael Wraalstad, BA05:100, neighbor
Jack Lundy, BA05:100, neighbor
Tim and Kathy Kubina, BA05:101, petitioners
Phillips "Duffy" Swift, BA05:103, petitioner
Rick Bjodstrup, neighbor BA05:103, neighbor
Paul Payne, BA05:040, petitioner
Dennis Dederich, BA05:040, architect
Greg Maniaci, BA05:040, builder
Jon Allyn, observer

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Tarmann *I move to approve the Summary of the Meeting of January 11, 2006, with the following change on Page 3:*

The second sentence of the reasons for the decision in the case of BA05:091 Joseph Green, which reads, "The residence is located very close to the road and the lake and in close proximity to commercial uses as well as the public boat launch." shall be changed to read, "The residence is located very close to the road and the lake and in close proximity to commercial uses as well as the Town of Oconomowoc boathouse and launch used in conjunction with the lake patrol."

The motion was seconded by Mr. Schultz and carried with three (3) yes votes. Mr. Bartholomew and Mr. Dwyer abstained because they were not present at the meeting of January 11, 2006.

NEW BUSINESS:

BA05:099 KENNETH AND SANDRA MURRAY

Mr. Dwyer

I make a motion to adopt the staff's recommendation for approval, as stated in the Staff Report, with Condition No. 1 changed to read as follows:

“The non-conforming ground-level wooden deck located near the lake must be reduced to the minimum size and configuration necessary to provide access to the shed and to the lake. Prior to the issuance of a Zoning Permit, a plan for the reduction of the deck and a re-vegetation plan must be submitted to the Planning and Zoning Division staff for review and approval. The deck shall be reduced in accordance with the approved plan and the area re-vegetated, no later than six (6) months after the date of the issuance of a Zoning Permit for the proposed additions. This deadline may be extended by the Planning and Zoning Division staff if it falls within the winter months when the site cannot be immediately re-vegetated, but in no case shall it be extended to more than twelve (12) months after the date of issuance of a Zoning Permit for the proposed additions.”

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The non-conforming shed near the lake and the non-conforming ground-level wooden deck located between the shed and the lake must be removed and the area re-vegetated no later than six (6) months after the date of the issuance of a Zoning Permit for the proposed additions. This deadline may be extended by the Planning and Zoning Division staff if it falls within the winter months when the site cannot be immediately re-vegetated, but in no case shall it be extended to more than twelve (12) months after the date of issuance of a Zoning Permit for the proposed additions.
2. Prior to the issuance of a Zoning Permit, an updated Plat of Survey, showing the location of all structures on the lot as well as the location of the proposed addition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
3. If any changes to the existing grade are proposed in the area around the addition, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring

properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 2.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested floor area ratio variance would be unnecessarily burdensome because it would prevent elimination of the potentially unsafe situation caused by the existing open stairs leading to the main entrance of the residence. Further, the proposed additions conform to all locational requirements of the Ordinance and they will not adversely affect the adjacent properties or the lake and are not contrary to the public interest. Granting a floor area ratio variance, with the recommended conditions, will also result in the elimination of a severely non-conforming shed and deck near the lake. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:100 DUANE AND BARBARA MLACHNIK

Mr. Tarmann

I make a motion to adopt the staff's recommendation, as stated in the Staff Report, with the recommended Condition No. 8 replaced with a new Condition No. 8 to read as follows:

"The two parcels on the northeast and southwest sides of Pretty Lake Rd. (Lot 157, Pretty Lake Addition, and part of Outlot E, Pretty Lake Subdivision) may not be sold separately without the approval of the Waukesha County Board of Adjustment. A Declaration of Restrictions to that effect shall be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a Zoning Permit."

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial of a shore setback variance, but approval of a special exception from the offset requirement and approval of variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the road setback, floor area ratio, and open space requirements, to permit the residence to be remodeled and expanded, subject to the following conditions:

1. The proposed addition and deck on the lake side of the residence must meet the required shore setback, utilizing the shore setback averaging provision of the Ordinance. The required shore

setback for an addition and deck on the lake side of the residence is the average of the shore setback of the residence to the northwest and the shore setback of the existing residence, as measured to the Ordinary High Water Mark of Pretty Lake.

2. The proposed additions near the northwest lot line may extend no closer to the northwest lot line than the existing residence.
3. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the Ordinary High Water Mark of Pretty Lake, as determined by the DNR on January 13, 2006; all existing structures; the shore setbacks of the existing residence and of the residence on the adjacent lot to the northwest, as measured perpendicular to the shoreline; and the staked-out location and shore setbacks of the proposed additions and deck, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
4. If compliance with the above conditions results in modifications to the proposed house plans, revised house plans must be submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit.
5. There shall be no changes to the existing grade around the residence.
6. Prior to the issuance of a Zoning Permit, the 10 ft. x 18 ft. unauthorized deck extension must be removed.
7. Prior to the issuance of a Zoning Permit, the non-conforming shed must be removed or relocated to a conforming location.
8. A Certified Survey Map, with a restriction that the two parcels on the northeast and southwest sides of Pretty Lake Rd. may not be sold separately and that the two parcels may contain only one residence, must be prepared by a registered land surveyor, submitted to the Town of Ottawa and the Waukesha County Department of Parks and Land Use for review and approval, and recorded in the Register of Deed's office. The Certified Survey Map must be submitted to the Waukesha County Department of Parks and Land Use for review and approval, prior to the issuance of a Zoning Permit. The Certified Survey Map must be recorded in the Waukesha County Register of Deed's office within six (6) months of the issuance of the Zoning Permit.
9. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It has not been demonstrated that denial of a shore setback variance would be an unnecessary hardship,

since a more detailed Plat of Survey will either establish that the proposed addition is in compliance with the minimum shore setback requirement or that it could be brought into conformance with the minimum shore setback requirement with only minor modifications. Since the proposed additions would be no closer to the northwest lot line than the existing residence, they require only a special exception, rather than a variance, from the offset requirement, which does not require the demonstration of an unnecessary hardship.

Denial of the requested variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the road setback requirement would be unnecessarily burdensome because it would prevent any remodeling or expansion of the residence, which is modest in size and does not have a basement. Although the two parcels on the northeast and southwest sides of Pretty Lake Rd. are separately described lots of record, it does not appear they were ever intended to be used as two building sites. Due to the non-conforming size of the lake lot and possible physical limitations on the development of the vacant lot, it is in conformance with the purpose and intent of the Ordinance to require that the two parcels remain in the same ownership and that the two parcels may contain only one residence. Granting the requested floor area ratio and open space variances, with the recommended condition regarding the recording of a Certified Survey Map, will allow the proposed remodeling and expansion to begin while the Certified Survey Map is being prepared and reviewed, but the property will be ultimately be brought into conformance with the floor area and open space requirements. The proposed remodeling will result in only a minor expansion that will not adversely affect the adjacent properties or the lake and is not contrary to the public interest. Therefore, the approval of a special exception from the offset requirement and variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the road setback, floor area ratio, and open space requirements, to permit the residence to be remodeled and expanded, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:101 TIM AND KATHY KUBINA

Mr. Dwyer

I move to deny the requested variance from the offset requirement to permit an addition to be located less than 10 ft. from the east lot line, but to approve the requested special exception from the offset requirement to permit an addition to be located less 10 ft. from the west lot line and to approve the request for variances to remodel a non-conforming structure in excess of 50% of its fair market value and from the floor area ratio and open space requirements, as recommended by the staff, subject to the conditions stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for denial of the requested variance from the offset requirement to permit an addition to be located less than 10 ft. from the east lot line, but approval of the requested special exception from the offset requirement to permit an addition to be located less 10 ft. from the west lot line and approval of the request for variances to remodel a non-conforming structure in

excess of 50% of its fair market value and from the floor area ratio and open space requirements, subject to the following modifications and conditions:

1. The proposed addition may extend straight back from the southwest corner of the existing residence, but it may be located no closer to the west lot line than the existing residence, with an overhang not to exceed 18 inches in width.
2. The proposed re-configured residence must be reduced in size and/or the boathouse must be removed so that the total floor area on the property, including the first and second floors of the residence, any screened or covered porches, the detached garage and the boathouse (if it is to remain), but not the area of the exposed basement or the proposed covered walk between the residence and the detached garage, does not exceed 3,350 sq. ft. This will result in a floor area ratio of approximately 22.8%.
3. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
4. Prior to the issuance of a Zoning Permit, a detailed cost estimate must be submitted to the Planning and Zoning Division staff.
5. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed addition, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. If any changes to the existing grade are proposed in the area around the addition, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 5.
7. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height,

bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It has not been demonstrated that denial of an offset variance to permit the proposed addition to be located less than the required minimum of 10 ft. from the east lot line would be unnecessarily burdensome, since the addition, which is proposed to be 7.2 ft. from the east lot line, could be re-designed to meet the offset requirement. Since the proposed addition would be no closer to the west lot line than the existing residence, it requires only a special exception, rather than a variance, from the offset requirement from the west lot line, which does not require the demonstration of an unnecessary hardship. A hardship exists with respect to open space because the lot area of 14,709 sq. ft. is less than the required minimum open space of 15,000 sq. ft. Conformance with the floor area ratio requirement would permit no expansion of the residence, which would be unnecessarily burdensome. It is felt that some relief from the floor area ratio requirement is necessary to permit the residence to be remodeled and updated, in keeping with other homes in the area, but not to the extent that has been requested. The approval of a special exception from the offset requirement from the west lot line and the approval of variances to remodel a non-conforming residence in excess of 50% of its fair market value and from the floor area ratio and open space, with the recommended modifications and conditions, is in conformance with the purpose and intent of the Ordinance and will allow the residence to be remodeled and expanded in a way that will not adversely affect the neighboring properties, the lake, or the general public.

BA06:103 PHILLIPS AND VICKY SWIFT

Mr. Schultz

I make a motion to approve the request, in accordance with the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. Prior to the issuance of a Zoning Permit, a Plat of Survey showing all existing structures must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review.
2. If the Planning and Zoning Division staff feels that the Plat of Survey required above differs significantly from the Site Plan submitted with the application, this request shall be reconsidered by the Board of Adjustment under "Old Business", without payment of an additional fee, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height,

bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Since the cumulative 50% limit has already been exceeded by the previous remodeling, denial of a variance to remodel a non-conforming structure in excess of 50% of its fair market value would be unnecessarily burdensome because it would result in the continued existence of an unused one-car attached garage and would prevent that existing space from being put to a better use as a second bathroom. The proposed remodeling will not expand the size of the residence or increase the degree of non-conformity. Further, it will not adversely affect the adjacent properties or the lake and is not contrary to the public interest. Therefore, the approval of this request is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA05:040 PAUL AND JULIE PAYNE

Mr. Tarmann *I move to reconsider the conditions placed on the variances granted on July 13, 2005, based on new information that has been submitted, regarding the location of 100-year floodplain, as a result of the new Plat of Survey.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Mr. Bartholmew *I make a motion to amend Condition No. 6 of our decision of July 13, 2005, as recommended in the Staff Memorandum, for the reasons stated in the Staff Memorandum. All other previous conditions of approval shall remain the same.*

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was to amend Condition No. 6 of the approval of July 13, 2005, as follows:

Revised Condition No. 6: "The residence and attached garage and any other proposed appurtenances must be located a minimum of 11.2 ft. from the 100-year floodplain elevation or the Ordinary High Water Mark of Tearney Lake, whichever is more restrictive, with overhangs not to exceed two (2) ft. in width."

The reasons for the recommendation, as stated in the Staff Memorandum, are as follows:

The approval of the request to amend Condition No. 6 of the Board of Adjustment Decision of July 13, 2005, is in conformance with the purpose and intent of the original decision and therefore is in conformance with the purpose and intent of the Ordinance.

POSSIBLE CHANGE OF BOARD OF ADJUSTMENT MEETING DAYS

The Board members discussed the possibility of meeting on Tuesdays, rather than Wednesdays, in accordance with a proposed plan to implement a security policy that would require all night meetings to be held on Tuesdays. This is being considered so that the building could be locked in the evenings, except on Tuesday nights, when security personnel would be present.

Mr. Ward and Mr. Schultz indicated they would be available to meet on Tuesdays, as long as the meetings would continue to be scheduled on the second and fourth weeks of the month. Mr. Ward noted he would not be available to meet on the third Tuesday of the month. Mr. Schultz noted he would not be available on either the first or third Tuesdays of the month. Mr. Bartholomew indicated that right now he would be available on Tuesdays, but the Town of Vernon Plan Commission, of which he is a member, is considering changing their regular meeting night to Tuesday, which could present a conflict. Mr. Tarmann indicated he did not have a conflict with changing the meeting day to Tuesday.

The Board will continue to think about possible ramifications to a change in the meeting day and will discuss this matter further at a future meeting.

ADJOURNMENT:

Mr. Dwyer *I make a motion to adjourn this meeting at 9:35 p.m.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment